

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAFAEL CERVANTES (1) and ERICA
GODINEZ (2),

Defendants.

No. 1:16-CR-2006-EFS-1
1:16-CR-2006-EFS-2

CASE MANAGEMENT ORDER

Having considered the parties' proposed case schedule and deadlines, the Court now enters the following Case Management Order, which sets forth the deadlines, hearings, and requirements the parties will observe in this matter. To the extent this Order conflicts with any previously entered Orders in this matter, this Order shall govern. The Court will grant relief from the requirements in this Order only upon motion and good cause shown.

IT IS HEREBY ORDERED:

- 1. Emailing the Court.** Where this Order requires counsel to email documents to the Court, all documents shall be attached to the email in Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject line of each email shall be formatted as follows:

[Case No.]; [Case Name]; [Title of Document]

(e.g.: CR-13-9999-EFS; USA v. Doe; Trial Brief)

2. Discovery

A. All discovery documents must be Bates-stamped with a unique identifier and must be produced digitally in a text-searchable format. The Court will grant relief from this requirement only in exceptional circumstances, upon motion and good cause shown.

B. Pursuant to the Eastern District of Washington Local Criminal Rule 16, the Court presumes a defense request for discovery under Federal Rule of Criminal Procedure 16 for **documents and objects**, Fed. R. Crim. P. 16(a)(1)(E), **reports of examinations and tests**, Fed. R. Crim. P. 16(a)(1)(F), **AND expert witnesses**, Fed. R. Crim. P. 16(a)(1)(G), and as such these items are ordered disclosed. Therefore, the Court imposes a reciprocal duty on defense counsel to provide discovery under Rule 16(b)(1)(A-C) **for each of the above categories**. Defendants who do not wish to invoke reciprocal discovery obligations must file a notice with the Court and with opposing counsel prior to accepting discovery from the Government.

C. The Court further presumes a request for discovery and disclosure under Federal Rules of Evidence 404(b), 608(b), and 609, *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *United*

1 *States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991), and
2 their progeny, and as such these items are ordered
3 disclosed.

4 **D.** For those discovery matters ordered to be disclosed by
5 this Order, a party shall not file a motion seeking
6 such discovery, unless the disclosing party fails to
7 timely produce such discovery.

8 **E.** Any party seeking discovery or disclosure not otherwise
9 provided for in this Order, or discovery that was
10 ordered by this Order and not timely provided, shall
11 file a motion stating the specific materials sought,
12 the legal authority for the specific request, and
13 certify that the movant has in good faith conferred or
14 attempted to confer with the opposing party in an effort
15 to obtain the discovery or disclosure without court
16 action.

17 **3. Expert-Witness Summaries**

18 **A.** Each party shall produce to opposing counsel all
19 summaries of its expert-witness testimony for which
20 disclosure is required under Federal Rule of Criminal
21 Procedure 16, by the deadlines set forth below:

22 **USAO's Experts: March 8, 2016**

23 **Defendants' Experts: March 15, 2016**

24 **USAO's Rebuttal Experts: March 22, 2016**

25 Also by the applicable deadline, counsel shall email
26 an electronic copy of the summary to the Court at

1 SheaOrders@waed.uscourts.gov and shall simultaneously
2 file a Notice of Compliance with this requirement.

3 **B.** All summaries of expert witness testimony must conform
4 to Federal Rule of Criminal Procedure 16 and applicable
5 case law interpreting that Rule. The Court will not
6 permit an expert witness to testify about opinions
7 which are not explicitly expressed in that expert's
8 summary. *See, e.g., United States v. W.R. Grace*, 526
9 F.3d 499 (9th Cir. 2008).

10 **C.** A party is not permitted to call more than two expert
11 witnesses on any issue, except with permission of the
12 Court. L.R. 43(a)(3).

13 **4. Motions Practice**

14 **A. Generally.** By no later than **March 15, 2016**, all pretrial
15 motions – including discovery motions, *Daubert* motions,
16 and motions *in limine* – must be filed and served. *See*
17 Fed. R. Crim. P. 12(c). All motions shall either be:
18 a) noted for hearing without oral argument fourteen
19 (14) days after filing, or b) noted for hearing with
20 oral argument at the pretrial conference. Responses
21 and replies to motions must be filed in accordance with
22 Local Rule 7.1.

23 **B. Expedited Hearing.** Any party seeking an expedited
24 hearing on a time-sensitive matter must file a motion
25 to expedite which 1) demonstrates good cause, 2) states
26 the position of the opposing party to the motion, and

3) sets a date of hearing that is no less than **seven (7) days** after the motion's filing. Should the motion to expedite require more immediate judicial attention, the motion shall establish the necessity for an immediate hearing, and the filing party shall notify chambers staff of the motion.

5. Trial Continuances

A. Motion Deadline. All motions to continue the trial must be heard before or at the pretrial conference. Any motion to continue trial made after the pretrial conference has occurred will not be granted absent exceptional circumstances.

B. Statement of Reasons. Pursuant to 18 U.S.C. § 3161, if the Defendant seeks a continuance, a Statement of Reasons in support of the motion to continue must be filed contemporaneously with the motion.¹ The Statement of Reasons must 1) be signed by the Defendant, 2) be signed by a certified translator, if applicable, and 3) indicate the latest date upon which Defendant is willing to proceed to trial.

C. Procedure. Before filing a motion to continue, counsel shall first contact the Courtroom Deputy at (509) 943-8172 to obtain new pretrial conference and trial dates consistent with the length of the requested trial

¹ The Court's Statement of Reasons template can be found on the Eastern District of Washington's public website: www.waed.uscourts.gov.

1 continuance. Thereafter, counsel shall confer with
2 opposing counsel regarding new case management
3 deadlines consistent with the new pretrial conference
4 and trial date. **All motions to continue must include**
5 **new proposed case management deadlines (either joint**
6 **or individual) to ensure the to-be-imposed deadlines**
7 **are best suited to this case.**

8 **6. Pretrial Conference**

9 **A.** The Pretrial Conference remains **SET** for **March 30, 2016**,
10 at **1:30 p.m.** in **YAKIMA**. At this hearing, the Court
11 will hear **ALL** pretrial motions.

12 **B.** All pretrial conferences are scheduled to last no more
13 than **thirty (30) minutes**, with each side allotted
14 **fifteen (15) minutes** to present their own motions and
15 resist motions by opposing counsel. If any party
16 anticipates requiring longer than fifteen minutes, that
17 party must notify the Courtroom Deputy at least seven
18 (7) days prior to the hearing. **Any party who fails to**
19 **provide this notice will be limited to fifteen (15)**
20 **minutes.**

21 **7. Confidential Informants (CIs).** By no later than **April 7,**
22 **2016**, the USAO shall disclose to Defendants the identity of
23 any CIs used in the case and shall advise Defendants at that
24 time whether any CI so identified is willing to be
25 interviewed by defense counsel.
26

1 **8. Grand Jury Transcripts.** The USAO shall produce copies of the
2 grand jury transcripts for any witness it intends to call at
3 trial by: **April 7, 2016.**

4 **9. Exhibit Lists**

5 **A.** By no later than **April 8, 2016**, each party shall file
6 a list of exhibits the party intends to introduce at
7 trial. Each party shall also email copies of their
8 exhibit list to the Court at
9 SheaOrders@waed.uscourts.gov. The parties shall
10 provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

15 Exhibit lists shall include a unique exhibit number and
16 a brief description of the exhibit. For all exhibits
17 consisting of an audio or video file, the exhibit list
18 must designate the precise beginning and ending time
19 indexes of the portion of the file the party intends
20 to use at trial.

21 **B.** The USAO shall consecutively number their exhibits from
22 **1 to 999**. In single-defendant cases, Defendant shall
23 consecutively number exhibits from **1000 to 1999**; in
24 multi-defendant cases, Defendants shall consecutively
25 number exhibits from x000 to x999, substituting "x" for
26 each Defendant's assigned case identifier (e.g.

Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

10. **Witness Lists.** By no later than **April 8, 2016**, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must identify the existence, but need not include the name, of any CI the USAO intends to call to testify.** Parties shall email copies of their witness list to the Court at SheaOrders@waed.uscourts.gov.

11. **Requested Voir Dire, Trial Briefs, Proposed Jury Instructions, and Verdict Form.** By no later than **April 8, 2016**, each party shall file requested voir dire, a trial brief, proposed jury instructions, and verdict form, in accordance with the requirements below. Each party shall email copies to the Court at SheaOrders@waed.uscourts.gov.

A. Requested Voir Dire. The parties may request that the Court include specific questions during the Court's standard voir dire. Requested voir dire shall not duplicate information elicited in the Clerk's Office Jury Questionnaire ("COJQ") and the Court's Criminal Jury Trial Procedures Letter.

B. Trial Briefs. Trial briefs shall not exceed twenty (20) pages without prior Court approval, upon motion and good cause shown. LR 39.1.

1 **C. Proposed Jury Instructions and Verdict Form.** Jury
2 instructions shall 1) address issues that are unique
3 to the case, and 2) include instructions regarding the
4 elements of each charge or defense. If a Ninth Circuit
5 Model Jury Instruction exists for a particular charge
6 or defense, the parties shall provide the model
7 instruction or shall submit argument as to why the
8 instruction is inadequate or no longer supported by
9 law. Proposed jury instructions shall be accompanied
10 by a proposed verdict form. **The parties must confer**
11 **to develop joint proposed jury instructions and the**
12 **verdict form.** The Court will only accept an individual
13 party's proposed jury instructions on those
14 points/issues upon which the parties could not agree,
15 and only if the party's memoranda accompanying the
16 individually proposed instruction(s) sets forth the
17 legal authority and justification for why the
18 instruction is necessary.

19 **12. Exhibits**

20 **A. Exhibit Binders.** By no later than **April 11, 2016**, each
21 party must provide to the Court two Bates-stamped
22 copies of all trial exhibits – or, in the case of
23 physical exhibits, a photograph or other reproduction
24 of the exhibit – the party intends to introduce at
25 trial. All trial exhibits shall be organized
26 sequentially by exhibit number in a three-ring binder.

1 The exhibit binders provided to the Court will not be
2 available for use by the attorneys at trial.

3 **B. JERS.**

4 i. The Court utilizes the Jury Evidence Recording
5 System (JERS), a system that makes evidence
6 digitally available to the jury during
7 deliberations. Counsel shall promptly consult the
8 Court's JERS Information web page² to acquaint
9 themselves with JERS procedures and to ensure they
10 acquire, retain, and provide evidence to the Court
11 in the necessary format.

12 ii. By no later than April 8, 2016, each party who
13 intends to introduce evidence at trial must supply
14 its JERS exhibits to the Courtroom Deputy in the
15 manner and format set forth in the JERS - Basics for
16 Lawyers document.³ Counsel may contact the Courtroom
17 Deputy at (509) 943-8172 with any questions.

18 **C. Exchange of Exhibits.** By no later than April 8, 2016,
19 each party must provide to all other parties a copy of
20 the exhibits it intends to introduce at trial. The
21
22

23 ² <http://www.waed.uscourts.gov/jers-information>.

24 ³ This document can be found on the Court's public website at the
following link:

25 [http://www.waed.uscourts.gov/sites/default/files/u86/JERS%20-](http://www.waed.uscourts.gov/sites/default/files/u86/JERS%20-%20Basics%20for%20Lawyers.pdf)
26 [%20Basics%20for%20Lawyers.pdf](http://www.waed.uscourts.gov/sites/default/files/u86/JERS%20-%20Basics%20for%20Lawyers.pdf).

exhibits must be provided in digital format, unless the parties agree otherwise.

13. Trial Notices. By no later than **April 8, 2016**, each party shall file a notice that indicates the amount of time requested for voir dire and for opening statement. In addition, defense counsel must indicate if his/her client waives presence at sidebar and jury questions.

14. Technology Readiness Meeting. By no later than **April 11, 2016**, any party seeking to offer video or audio evidence at trial must meet with Court staff at the location of the trial to verify compatibility with the Court's presentation systems. The parties shall contact the Courtroom Deputy at (509) 943-8172 to arrange this meeting.

15. Trial. The jury trial remains **SET** for **April 18, 2016**, at **9:30 a.m.** in **YAKIMA**. Counsel and Defendants shall be prepared to meet with the Court at least thirty (30) minutes prior to the commencement of the trial.

16. Summary of Deadlines

Rule 16 expert summaries produced to other parties and emailed to Court: USAO's Experts: Defendants' Experts: USAO's Rebuttal Experts:	March 8, 2016 March 15, 2016 March 22, 2016
All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i> , filed	March 15, 2016
PRETRIAL CONFERENCE Deadline for motions to continue trial	March 30, 2016 1:30 P.M. - YAKIMA
CIs' identities and willingness to be interviewed disclosed to Defendants (if applicable)	April 7, 2016
Grand jury transcripts produced to Defendants:	April 7, 2016

Exhibit and witness lists filed and emailed to the Court	April 8, 2016
Requested voir dire, trial briefs, jury instructions, and verdict forms filed and emailed to the Court	April 8, 2016
Exhibits delivered to all other parties	April 8, 2016
Exhibit binders delivered to the Court	April 11, 2016
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	April 8, 2016
Trial notices filed with the Court	April 8, 2016
Technology readiness meeting (in-person)	April 11, 2016
JURY TRIAL	April 18, 2016 9:30 A.M. - YAKIMA

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals Service.

DATED this 7th day of March 2016.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge